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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 DARRELL ONEIL BUCKNER,

12 Petitioner,

13 v.

14 UNKNOWN,

15 Respondent.
16

No. 2:23-CV-0710-TLN-DMC

ORDER

17 Petitioner, a prisoner proceeding pro se, brings this petition for a writ of habeas corpus
18 under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to
19 Eastern District of California local rules.

20 On June 6, 2023, the Magistrate Judge filed findings and recommendations herein which
21 were served on the parties and which contained notice that the parties may file objections within
22 the time specified therein. No objections to the findings and recommendations have been filed.

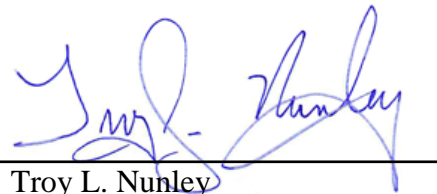
23 The Court presumes that any findings of fact are correct. *See Orand v. United States*, 602
24 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo.
25 *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the
26 magistrate judge are reviewed de novo by both the district court and [the appellate] court . . .”).
27 Having reviewed the file, the Court finds the findings and recommendations to be supported by
28 the record and by the proper analysis.

Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the Court has considered whether to issue a certificate of appealability. Before Petitioner can appeal this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The Court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir. 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)). For the reasons set forth in the Magistrate Judge’s findings and recommendations, the Court finds that issuance of a certificate of appealability is not warranted in this case.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed June 6, 2023 (ECF No. 7) are ADOPTED IN FULL;
2. This action is DISMISSED without prejudice for lack of prosecution and failure to comply with Court rules and orders;
3. Petitioner’s motion for the appointment of counsel (ECF No. 3) is DENIED as moot;
4. The Court DECLINES to issue a certificate of appealability; and
5. The Clerk of the Court is directed to enter judgment and close this case.

Date: August 4, 2023



Troy L. Nunley
United States District Judge